IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 105 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

GIRISHBHAI B RAJGOR

Appearance:

1. Criminal Appeal No. 105 of 1992

MR IM PANDYA, APP for Petitioner No. 1

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 11/03/2003

ORAL JUDGEMENT

1. The State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal

Procedure challenging the judgment and order of acquittal passed by the Ld. Chief Judicial Magistrate, Bhuj dated 6th June, 1991 in Summary Case No. 5978 of 1988.

2. Present respondent is the original accused of the aforesaid Summary case. He was prosecuted for committing offence made punishable u/S. 7 read with sec. 16 of the Prevention of Food Adulteration Act (hereinafter referred to as 'the Act'). The case of the prosecution is that on 13th February, 1988 Food Inspector attached to Bhuj Municipality Mr. Manharlal Chunilal Patel visited the shop of respondent, who is dealing in grocery items. Alongwith him panch Dhirajkumar Shivaji was also present. At the shop respondent was present. The Food Inspector therefore, approached him and gave him his introduction as Food Inspector. He also intimated him that he would like to purchase a sample of chilli powder meant for sale which was kept in a gunny bag. He thereafter asked the respondent to give him some implement to take out the chilli powder from the gunny bag. The respondent gave him a clean moistureless steel spoon. The Food Inspector with the said spoon took out about 450 grms. of chilli powder in a clean brown paper. He also paid the respondent the price of 450 grms. for chilli powder and obtained a cash memo from him. The Food Inspector also served him with a notice intimating the respondent that he had purchased the chilli powder for the purpose of analysis. The said notice has been produced at Exh. 21. The Food Inspector thereafter took out three glass bottles which were clean and moistureless and which were shown to the panch as well as the respondent and filled them with the chilli powder by dividing it into three equal parts. He thereafter closed the mouth of the bottles with screwed tin lids. He also applied a label on each of the three bottles wherein the details such as serial no., code no., date, place and name of the vendor were written. The Food Inspector thereafter packed each of the three bottles in accordance with the provisions of the Prevention of Food Adulteration Rules (hereinafter referred to as 'the Rules') and in particular rule 16 of the Rules. He simultaneously prepared the panchnama of the proceedings which was duly signed by panch as well as the vendor himself. Subsequently he despatched one bottle of sample alongwith the memorandum of seal impression as envisaged under rule 17 of the Rules by placing them in a cover and he despatched the cover by State Transport Parcel Service to the Public Analyst at Rajkot for the purpose of analysis. The said sample was duly received by the Public Analyst and he also gave intimation with regard to the same to the Food Inspector. The other two bottles

containing sample of chilli powder were sent to the Local Health Authority, Bhuj Municipality to keep them in his custody. The Food Inspector sent a copy of the seal impression alongwith the memorandum separately to the Public Analyst as per the requirement of rule 18 of the Rules. On receipt of the report from the Public Analyst, it was found that the sample did not conform to the standard prescribed under the Rules and non permitted pink and orange coloured oil soluble coaltar colours were detected. In short according to the Public Analyst, the sample was adulterated one. The Food Inspector, therefore, submitted all the relevant papers alongwith the report of the Public Analyst, Rajkot to the Local Health Authority for obtaining his sanction u/S. 20 of the Act. The Local Health Authority, Bhuj accorded the sanction to prosecute the respondent, which is at Exh. 30 on the record. The Food Inspector later on on 6th July, 1988 filed complaint against the respondent in the Court of the Ld. Chief Judicial Magistrate, Bhuj. The respondent in accordance with the provisions of section 13 (2) of the Act was duly intimated about the filing of the complaint by a Registered A.D. notice which was also accompanied by report of the Public Analyst. It appears that the respondent made application to the Ld. Magistrate requesting him for sending the remaining sample to the Central Food Laboratory for analysis and its report. The said request was acceded to and one of the samples lying with the Local Health Authority was sent to the Central Food Laboratory, which after carrying out analysis of the offending article, submitted its report, which is at Exh. 32. The report of the Central Food Laboratory also contained the opinion that the sample was adulterated one. However, according to the Central Food Laboratory, there was no presence of oil soluble coaltar colours, but the sample showed the presence of starch cells and characteristics of wheat starch.

3. At the trial, the Ld. Magistrate proceeded with the case in a summary way and the case was numbered as Summary Case No. 5978 of 1988. The Ld. Magistrate put to the respondent the gist of the accusation made in prosecution's case and he denied the same. The prosecution thereafter in support of its case examined Manharlal Chunilal Patel, P.W. 1 at Exh. 18, the concerned Food Inspector. According to him, he had visited the shop of the respondent at 11.00 a.m. on 13th February, 1988 and he obtained a sample of chilli powder for the purpose of analysis after following all the initial requirements envisaged under the Act and the Rules. From his evidence it appears that after obtaining

the sample, he stored them in bottles and packed them in accordance with rule 16 of the Rules. It also appears that he thereafter sent one bottle to the Public Analyst in the manner as provided under rule 17 of the Rules and also sent a copy of the seal impression with memorandum separately as provided under rule 18 of the Rules. On receipt of the report of the Public Analyst to the effect that the sample was adulterated one, he obtained requisite permission from the Local Health Authority and ultimately lodged complaint against the respondent, which is at Exh. 1 on the record of the case. In the cross-examination of this witness by the defence, he has stated that the respondent deals in different commodities such as wheat, Bajra, flour, etc. He, however, denies that the wheat flour was lying by the side of the chilli powder from which he had drawn the sample. He has also denied the suggestion made by the defence that steel spoon which was given by the respondent for taking out chilli powder was lying in the wheat flour and it was that spoon which was used by the Food Inspector in taking out the chilli powder from the gunny bag. He has further denied the suggestion that he had not cleaned the bottles in which the chilli powder was filled in for the purpose of analysis. He, however, admits that neither in the complaint nor in the panchnama it was stated that the bottles were cleaned on previous day.

3.1. The prosecution has also placed reliance on the evidence of Dhirajlal Shivaji P.W. 2 Exh. 33. He has acted as a panch at the time when the sample was collected by the Food Inspector from the shop of the respondent. In the examination-in-chief he has stated that the Food Inspector had taken sample of the chilli powder from the gunny bag lying in the shop of the respondent and he had paid for the purchase of 450 grms. of chilli powder. He has also stated that the chilli powder was divided into three equal parts and kept in three glass bottles which were packed by the Food Inspector in a brown paper and after tying them with the string he had sealed them. He has also stated that on the label pasted on the bottles he and the Food Inspector and also the respondent had put their signatures. He also admits his signature on the panchnama. In the cross-examination by the defence this witness has stated that the Food Inspector had not cleaned the bottles in which the sample was collected in his presence. He also states that the bag containing wheat flour was lying near the gunny bag in which the chilli powder was kept. He also states that when the Food Inspector asked for some implement to take out the chilli powder from the gunny bag, the respondent had given a spoon which was lying in

the wheat flour and at the time of giving the spoon it was not cleaned. He has further stated that the paper bag in which the chilli powder was initially collected was not cleaned in his presence.

4. After completion of the recording of the oral evidence the statement of the respondent was recorded and it appears that he has not taken any specific defence but his defence is of general denial.

5. At the end of the trial, the Ld. Chief Judicial Magistrate though on the merits of the case held against the respondent by believing the case of the prosecution in toto, he acquitted the respondent solely on the ground that the sanction which was accorded by the Local Health Authority did not contain any reasons for grant of such sanction. The Ld. Magistrate has placed reliance on the decision of this Court rendered in the case of Ramanbhai Shivabhai Prajapati v/s. The State of Gujarat reported in 1990 (2) G.L.H. at page 576 and also on a decision of the Bombay High Court rendered in the case of Gahininath Bhimrao Patekar v/s. State of Maharashtra reported in 1988 Criminal Law Journal at page 48. In the opinion of the Ld. Magistrate the sanction is bad in law for want of application of mind and the reasons. He has, therefore, come to the conclusion that the invalid sanction is a fatal blow to the case of the prosecution and that would entitle the respondent to have an order of acquittal in his favour. He, therefore, acquitted the respondent.

6. It is in these circumstances the State, being aggrieved by the said order of acquittal, has approached this Court.

7. Mr. I.M. Pandya, Ld. APP appearing for the appellant - State has submitted that the Ld. Magistrate having accepted the case of the prosecution committed grave error in acquitting the respondent solely on the ground that the sanction was defective and it was not in accordance with the provisions of section 20 of the Act. He has further submitted that so far the question of validity of sanction on the ground of assignment of reasons is concerned, by now it is a settled law that the competent authority is not required to assign reasons and he is not required to judge the pros and cons of the case. He has also pointed out that the decision of this Court on which reliance is placed by the Ld. Magistrate, has been subsequently overruled by the Division Bench of this Court in a decision rendered in the case of H.D. Sevak, Food Inspector v/s.

Nareshbhai Devandas Vadhvani reported in 1991 (2) G.L.H. at page 615. He has, therefore, submitted that the order of acquittal passed in favour of the respondent is required to be quashed and set aside.

7.1. As against that, Mr. M.S. Shah, learned advocate appearing for the respondent has submitted that even if the decision of the Ld. Magistrate based on invalid sanction is held to be wrong, there are several other aspects involved in this case concerning the merits, which go to show that the prosecution has not established the guilt of the respondent. In other words, according to him, the prosecution has not been able to prove its case against the respondent beyond any reasonable doubt and, therefore, the order of acquittal does not call for any interference from this Court. He has drawn my attention to the evidence of panch and also to the report of the Central Food Laboratory and has submitted that if both these documents are read together, it clearly shows that the offending article was found to be adulterated because of the reason that the spoon lying in the wheat flour was used for taking out chilli powder. He has lastly submitted that this appeal does not have any merit and it deserves to be dismissed.

8. With a view to reappreciate the evidence I have gone through the entire record of this case and also the decisions relied on by Mr. I.M. Pandya. Perusal of the judgment clearly shows that the order of acquittal has been based solely on the ground that the Local Health Authority had not assigned any reasons for granting sanction and in the opinion of the Ld. Magistrate, the grant of sanction was without application of mind. The Ld. Magistrate, therefore, had placed reliance on the decision rendered by the Ld. Single Judge of this Court in the case of Ramanbhai Shivabhai Prajapati (supra). From the decision which has been cited by Mr. Pandya before me, it clearly appears that the view taken by the Ld. Single Judge of this Court has been overruled by the Division Bench in a later decision in the case of H. D. Sevak, Food Inspector (supra). In view thereof, the decision on which the reliance has been placed by the Ld. Magistrate no longer remains a good law and the conclusion reached by the Ld. Magistrate is erroneous and not in consonance with the ratio laid down by the Division Bench of this Court in the aforesaid case. Obviously the result is that the finding of the Ld. Magistrate is required to be quashed and set aside.

9. However, while appreciating the evidence on record, it clearly emerges that initially the Public

Analyst had found the sample to be adulterated for the mixture of non-permitted colour and that was basis of the complaint lodged by the Food Inspector. However, when the sample was sent to the Central Food Laboratory at the request of the respondent, it gave its report which is at Exh. 32 and in the opinion of the Central Food Laboratory, there was no presence of oil soluble coaltar colour, but according to it, the microscopic examination reveal presence of starch cells and characteristics of wheat starch. Obviously the report of the Public Analyst will have to make way for the report of Central Food Laboratory and it is the report of the Central Food Laboratory which prevails for the purpose of this prosecution. It is very clear that so far the report of Central Food Laboratory is concerned, it did not find any non permitted pink and orange coloured oil soluble coaltar colour but it only found the starch cells of wheat starch. The evidence of Food Inspector shows that since he did not carry any implement to take out chilli powder from the gunny bag, he had asked respondent to provide him with one and the respondent had given him a steel spoon which was clean and moistureless. He has also denied that the spoon was lying in the wheat flour which was placed near the gunny bag containing chilli powder. However, evidence of panch witness, namely Dhirajlal Shivaji clearly shows that the bag containing wheat flour was lying very near to the gunny bag containing chilli powder and the respondent had given the spoon which was lying in the wheat flour to the Food Inspector for taking out the chilli powder from the gunny bag. Not only that he has further stated that before taking out the chilli powder the Food Inspector had not cleaned the spoon. Moreover, he has also stated that the paper bag in which initially the chilli powder was collected by the Food Inspector was also not cleaned in his presence nor the bottles in which the chilli powder was filled were cleaned in his presence. It is, therefore, very well possible that when the spoon which was lying in the wheat flour was used for drawing the sample, the wheat starch particles are bound to get mixed with the sample and upon microscopic examination they are bound to reveal their presence. This seems to be the only reason why the Central Food Laboratory upon microscopic examination detected the presence of starch particles having characteristics of wheat starch. It, therefore, cannot be said that the chilli powder meant for sale and which was stored in the gunny bag at the shop of the respondent was adulterated. It also cannot be said that when the sample was sold to the Food Inspector by the respondent, it was adulterated one. The presence of starch of wheat flour which was found by the

Central Food Laboratory upon microscopic examination was solely due to the reason that the spoon lying in the wheat flour was used for taking out the chilli powder. In that view of the matter, there is grave doubt in the mind of the Court whether the goods meant for sale from which the sample was collected was adulterated. It clearly appears that the prosecution has not been able to clear that doubt and for that reason case of the prosecution should fail.

10. In the result, though the ground of acquittal given by the Ld. Magistrate is not sustainable, the result remains the same and the respondent deserves to have order of acquittal in his favour. The appeal, therefore, fails and it is dismissed.

[AKSHAY H. MEHTA,J.]

* Pansala.